

### REMARKS

The foregoing amendments and these remarks are responsive to the Office Action mailed March 4, 2009. The Examiner indicated that claims 26-27 and 29-38 are allowable and rejected claims 28 and 39 under 35 U.S.C. §112, second paragraph. Claims 1-25 have been previously canceled, and claims 26-39 were pending. In response, claim 39 has been canceled without prejudice, and the rejection of claim 28 has been addressed below. Thus, claims 26-38 are allowable, and the Examiner is respectfully requested to withdraw the rejection.

#### **I. CLAIM REJECTIONS UNDER 35 U.S.C. §112**

In the Office Action, claims 28 and 39 were rejected under 35 U.S.C. §112. In particular, claim 39 was rejected under 35 U.S.C. §112, second paragraph, as failing to comply with the written description requirement. The Examiner stated that the claim contains subject matter not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor at the time the application was filed had possession of the claimed invention. Claim 39 has been canceled without prejudice. Thus, the Examiner is respectfully requested to withdraw the rejection.

As concerning claim 28, the Examiner rejected claim 28 under 35 U.S.C. §112, second paragraph, as well. The Examiner stated that claim 28 recites the limitation "said

rod pivot" in line 3. The claim is written such that the word "pivot" is a verb. The phrase "said rod" has antecedent basis in claim 26 with the "spinal implant rod." Claim 28 states in relevant part, "wherein each rod connecting portion is pivotally engaged to said post connecting portion and said rod connecting portion and said rod pivot about an axis transverse to a long axis of said post." Thus, for at least this reason, the objected to phrase has proper antecedent basis, and the Examiner is respectfully requested to withdraw the rejection.

## **II. ALLOWABLE SUBJECT MATTER**

The Examiner has indicated that claims 26-27 and 29-38 are allowable. In view of the arguments above, claim 28 is allowable above. Thus, claims 26-38 are allowable, and the Examiner is respectfully requested to issue a Notice of Allowance.

## **III. PETITION FOR THREE MONTH EXTENSION**

This is a Petition for a Three Month Extension of Time pursuant to 37 CFR § 1.136. Please charge the fee in the amount of \$555.00 for a three (3) month extension of time pursuant to 37 CFR § 1.17(a)(3) and charge any underpayment or credit any overpayment to Deposit Account No. 50-0951.

## CONCLUSION

For at least the reasons given above, claims 26-38 define patentable subject matter and are thus allowable. Should the Examiner believe that anything further is necessary in order to place the application in better condition for allowance, the Examiner is respectfully requested to contact the undersigned representative at the telephone number listed below.

No fees in addition to the three month extension of time are believed due; however, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 50-0951.

Respectfully submitted,

AKERMAN SENTERFITT

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